IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 760 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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TEXDYES CORPORATION

Versus

SATISHKUNMAR G MALIK

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Appearance:

1. First Appeal No. 760 of 1982

MR VC DESAI for Petitioner No. 1-3

MR DF AMIN for Respondent No. 1

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CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 13/09/2002

ORAL JUDGEMENT

The present appeal is filed being aggrieved by and dissatisfied with the judgement and decree dated 30.11.1981 passed by the learned City Civil Judge, Ahmedabad in Civil Suit No.1829 of 1977. The suit was

filed by the present respondent-- original plaintiff to recover arrears of salary, conveyance allowance, commission, etc. totalling to Rs.12,861=67 paise. The learned Judge after taking into consideration the rival contentions of both the parties was pleased to raise issues which are in para 6 of the judgement. Issue no.4 is as under:

> "Is it shown that the suit against defendant no.3 is not maintainable on the ground that he is not a partner in defendant no.1 firm?"

The learned Judge has answered the said issue in affirmative. Relevant discussion on this issue is in para 12 of the judgement and conclusion reached by the learned Judge is recorded as under:

> '.. .. Therefore, I am of the opinion that the suit against defendant no.3 be dismissed, but so far as defendants no.1 and 2 are concerned, that suit stands and thus the entire suit cannot be dismissed against them. Hence my finding for issue no.4 is in the affirmative."

The learned Judge after having recorded clear cut finding on the aforesaid issue when it came to pass final order the learned Judge was pleased to pass the following order:

> "The plaintiff's suit is partly decreed with costs.
>
> The defendants do pay the plaintiff a sum of Rs.6570.00 ps. The plaintiff is entitled to charge 6 per cent interest on the sum of Rs.6515.00 ps. from the date of the suit till realisation."

2. Thus, it is clear that an error has crept in while passing final order, as in reply to issue no.4 a finding is recorded to the effect that defendant no.3 is not a partner of defendant no.1 firm, this has not been taken into consideration while passing the final order.

3. Mr.Desai, the learned advocate though argued the matter at length and tried to assail the judgement of the learned Judge on other points too, he could not successfully assail the same. Except the aforesaid contention, no other contention raised by Mr.Desai is found acceptable. This is the only contention which is

found acceptable and is accepted. The First Appeal is allowed to the limited extent of modifying the judgement and decree of the learned Judge of the City Civil Court, Court No.17, Ahmedabad. The plaintiff to recover the amount from defendants no.1 and 2 only. The suit against defendant no.3 is hereby dismissed.

4. The First Appeal is allowed to the extent aforementioned. No order as to costs.

(Ravi R. Tripathi, J.)

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